

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
WRIT PETITION NO.6181 OF 2004

Bhumika Bhagwan Koli .. Petitioner

Versus

State of Maharashtra and Ors. .. Respondents

Mr.R.K.Mendadkar for the petitioner

Mr.R.D.Rane, A.G.P. for the respondent no.1 to 4

**CORAM: A.P.SHAH &
S.U.KAMDAR, JJ**

DATED: 12TH AUGUST, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J):

1. By the present petition, the petitioner is challenging the Order and Judgment dated 19th July 2004 passed by the Scheduled Tribe Certificate Scrutiny Committee inter alia directing the remand of the matter back to the Sub Divisional Officer, Alibaug for its reconsideration. Some of the material facts briefly enumerated are as under:

2. The Petitioner claims to belong to Malhar Koli

Tribe which is one of the Tribe recognised under the Presidential Notification issued in pursuance of Article 342(1) of the Constitution of India.

3. It is the case of the petitioner that the father of the petitioner was born in Village Thal Bazaar, Tal. Alibaug, Dist. Raigad. The father of the petitioner was admitted in the Raigad Zilla Parishad Primary Marathi School on 5th July 1956 and his caste was recorded as Malhar Koli. It is further the case of the petitioner that the petitioner's uncles were also admitted in the same school and their caste was mentioned as Hindu Malhar Koli in the year 1957 and 1959. In 1956, the President of India in exercise of powers conferred upon him by virtue of Article 342(1) of the Constitution of India included Malhar Koli Tribe as one of the Tribe in the list of Scheduled Tribe to the said Presidential Order. In the month of June 2002, the petitioner completed her B.E. (Computer Engineering) degree course from the University of Mumbai.

4. In 2003-04, the petitioner wanted to take admission to first year of 2 year full time degree course of MBA/MMS. On 21st July 2003, the result for the Common Entrance Test Examination for the aforesaid course was declared and the petitioner was placed in the merit list at Sr.No.2. On 1st August 2003, the respondent no.3 i.e. Competent Authority and Director, Technical Education displayed a separate allotment list for Maharashtra and in the said list the respondent no.3 was placed in the merit list subject to its production of Caste Certificate from respondent no.4.

5. In the meanwhile, sometime in April 2003, the petitioner filed an appeal before the Scheduled Tribe Certificate Scrutiny Committee against the decision of the respondent no.4. The said appeal was pending and was not decided by the time the petitioner's admission was finalised and therefore, the petitioner was required to approach this Hon'ble Court by filing a Writ Petition No.4737 of 2003. On 18th August 2003, this court directed the Scheduled Tribe Caste Certificate Committee to take

appropriate decision in pending appeal of the petitioner within a period of 3 weeks and in the meantime directed the respondent no.3 to keep one seat vacant in the management course. In spite of aforesaid order, the respondent no.2, Committee did not proceed and decide the said appeal. Ultimately, on 3rd November 2003, this court further directed the Committee to decide the matter and also directed the petitioner to appear personally before the respondent no.2 on 8th November 2003. Consequent upon the said direction on 10th November 2003, the petitioner appeared before the respondent no.2 Committee and tendered the documents including Primary School Leaving Certificate in respect of her father inter alia indicating that the caste of her father is recorded in the school record as Malhar Koli. The petitioner also produced certificates of her two real uncles. On 2nd December 2004, the respondent no.2 Committee rejected the appeal preferred by the petitioner. Being aggrieved by the said order, the petitioner preferred a writ to this court being Writ Petition No.9189 of 2003 which was allowed by

an order and Judgment dated 21st January 2004 and the respondent no.4 were directed to consider all the documents of the petitioner and then if satisfied issue a certificate within 3 weeks from the date of the receipt of the order.

6. On 27th January 2004, the petitioner appeared before the respondent no.4 and submitted the representation as well as documents for issuing the caste certificate and contended that the petitioner is entitled for issuance of caste certificate. On 15th April 2004, the respondent no.4 rejected the application of the petitioner for grant of caste certificate. Against the said order, the petitioner preferred a Writ Petition to this court being Writ Petition No.386 of 2004 and by and Order and Judgment dated 5th May 2004 this court directed the petitioner to approach the 2nd respondent Committee by filing an appeal and refused to entertain the Writ Petition. On 14th May 2004, the petitioner filed an appeal before the 2nd respondent and on 12th July 2004, the petitioner appeared before the said respondent no.2 Committee

for hearing when she was directed to produce extract from the primary school admission register in respect of the father of the petitioner. On 12th July 2004, the respondent no.3 who is the Competent Authority and Director, Technical Education issued a notification for admission in first year of 2 year full time post graduate degree course in MBA/MMS for the academic year 2004-05. On 27th July 2004, the petitioner filed an application online inter alia applying for the said course and claiming reserved seat under the caste of Scheduled Tribe. However, the respondent no.3 refused to accept the form of the petitioner in the reserved category and insisted the same to be accepted in open category because the petitioner did not possess the valid caste certificate in her favour.

7. The petitioner thereupon filed the present Writ Petition and approached this Hon'ble Court. By our order dated 6th August 2004 pending admission of the present Writ Petition, we directed respondent no.3 to permit and process the application of the

petitioner under the reserved category of Scheduled Tribe for admission to the first year of 2 year full time post graduate degree course in MBA/MMS through centralised allotment process for the academic year 2004-05. We further directed to grant the petitioner the provisional admission if she is found in the merit list which is separately prepared for the Schedule Tribe candidates under the reserved category.

8. In the meantime, on 19th July 2004, the respondent no.2 passed the impugned order and inter alia remanded the matter back to the respondent no.4 for reconsideration in the light of documents produced by the petitioner, particularly the School Leaving Certificate of her father. Being aggrieved by the aforesaid order and being apprehensive of her admission being cancelled the petitioner preferred the present Writ Petition.

9. We have heard the parties at length. On consideration of the facts and circumstances of the present case, we find that the petitioner is made

to litigate in the present case time and again for obtaining the caste validity certificate and already the petitioner has filed almost 3/4 writ petitions. We further find that remanding the matter back to the respondent no.4 by the respondent no.2 for reconsideration, is not in the interest of justice and further delaying the issuance of the caste certificate to the petitioner herein if she is entitled to. We are also of the view that in view of the Judgment of the Supreme Court in the case of Kumari Madhuri Patil and Another vs. Addl. Commissioner, Tribal Development And Others reported in (1994) 6 Supreme Court Cases 241 the caste certificate has to be validated by the Scheduled Tribe Certificate Scrutiny Committee. It has also held in the aforesaid Judgment that if necessary the Caste Scrutiny Committee can take assistance of the Vigilance Department to scrutinise the documents produced by the candidate claiming to be belonging to the Backward Class.

10. In the light of the aforesaid position in law,

we are of the view that in place of upholding the order passed by the respondent no.2 of remanding the matter back to the respondent no.4, the following order should be passed which will meet the ends of justice.

11. Respondent no.4 is directed to issue the caste certificate to the petitioner certifying that the petitioner is belonging to Malhar Koli Schedule Tribe. The petitioner thereafter within 2 weeks of issuance of such a caste certificate file an application before the Schedule Tribe Certificate Scrutiny Committee for validating the said caste certificate. While validating the said caste certificate, the respondent no.2 shall be entitled to conduct all necessary enquiries including vigilance enquiry so as to ascertain the legality, validity of the documents which are produced by the petitioner herein in support of her claim for caste certificate. Respondent no.2 shall take a decision in the matter within a period of 8 weeks from the date of receipt of the present order. The ad interim order granted by us on 6th August 2004

shall continue till the expiry of the period of 2 weeks from the date of the order passed by the 2nd respondent is communicated to the petitioner.

12. It is clarified that in an event if the petitioner's claim is negative by the respondent no.2 and caste certificate is invalidated then in that event the petitioner shall not claim any equity in support of her claim and not claim equity for the admission which has been granted under interim orders by this Hon'ble Court.

13. We dispose of the petition with the aforesaid orders. However, there shall be no orders as to cost.

Parties to act on a copy of this order duly authenticated by the Court Stenographer.